REMARKS

Claims 28, 29, 35, 37, 38, 40 – 43, 45 – 49, 51, and 54 – 59 are pending and claims 1 - 27, 30 – 34, 36, 39, 44, 50, 52, and 53 were previously cancelled. Claims 28, 29, 48, 49, 54, and 57 are amended and claim 55 is currently cancelled. No new matter has been added by virtue of the amendments, support being found throughout the specification and claims as originally filed. For example, support for the amendments to claims 28, 29, 48, 49, and 57 is found in prior claim 54. Upon entry of the amendment claims 28, 29, 35, 37, 38, 40 – 43, 45 – 49, 51, 54, and 56 – 59 will be pending.

Rejections under 35 U.S.C. §103(a)

Claims 28, 29, 38, 40, 48, 49, 51, 56, and 59 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Benavides et al. (U.S. Patent No. 6,443,179) in view of Orwar et al. (*Anal. Chem.* 2002, vol. 74, pages 6133-6138).

Claims 35 and 58 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Benavides et al. in view of Orwar et al. and further in view of Pfost (U.S. Patent No. 5,104,621).

Claims 41-43 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Benavides et al. in view of Orwar et al. and further in view of Bjornson et al. (U.S. Patent No. 6,103,199).

Claims 41-43 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Benavides et al. in view of Orwar et al. and further in view of Crandall et al. (U.S. Patent No. 6,352,766).

Claims 46 and 47 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Benavides et al. in view of Orwar et al. and further in view of DiZio et al. (U.S. Patent No. 6,455,152).

Claims 54 and 55 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Benavides et al. in view of Orwar et al. and further in view of Chiu et al. (U.S. Patent No. 7,470,518).

Claims 54 and 55 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Benavides et al. in view of Orwar et al. and further in view of Stanton et al. (U.S. Patent No. 7,125,660).

For the sake of brevity the rejections will be addressed concurrently. Applicants respectfully disagree with the rejections. Nevertheless, without acquiescing to the basis of the rejections and solely to advance prosecution, Applicants have amended claims 28, 29, 48, 49, and 57. As amended, the claimed system comprises a sensor chamber containing at least one sensor wherein the sensor is a cell based biosensor. None of the references, either individually or in combination, teach or suggest a system comprising at least one sensor wherein the sensor is a cell based biosensor.

Regarding Chiu et al. (U.S. Patent No. 7,470,518), Chiu et al. is being asserted as a reference under 35 U.S.C. § 102(e) in making the rejection under 35 U.S.C. § 103(a). However, Chiu et al. and the instant application were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. Accordingly, Chiu et al. is not available as a reference in a rejection under 35 U.S.C. § 103(a) (see 35 U.S.C. § 103(c)(1)).

Regarding Stanton et al. (U.S. Patent No. 7,125,660), contrary to the allegations of the Office Action, Stanton et al. fails to teach or suggest at least one sensor wherein the biosensor is a cell based biosensor. Instead, Stanton et al. teaches a biosensor wherein the biosensor is a nucleic acid aptamer or a nucleic acid riboreporter. (see Stanton et al. (U.S. Patent Application No. 09/952,680) Summary of Invention, pages 2-8). Moreover, Stanton et al. fails to teach or suggest a cell based biosensor that is a receptor. Instead, Stanton et al. merely teaches that nucleic acids aptamer or riboreporter biosensors could be made for a GPCR. (see Stanton et al. (U.S. Patent Application No. 09/952,680) page 57, lines 9 and 10).

In light of the amendment, the claims are not obvious over the cited references. Accordingly, Applicants respectfully requests that the rejection be withdrawn.

Double Patenting

The Examiner argues that if claims 28 and 29 are found allowable, then claims 48, 49, and 57 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. The Examiner argues that "when two claims in an application are duplicates or else are so close in content that

they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim." (Office Action, p. 12). Applicants respectfully traverse the rejection.

The claims are directed to different embodiments, and are not unnecessarily duplicative. However, in the interest of advancing prosecution, should claims 28 and 29 be allowed, applicants would consider amending or canceling any claims that would be duplicates of the allowed claims under 37 CFR 1.75.

The Examiner argues that claims 28, 29, 48, 49, and 57 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of Owar et al., (US Patent No. 7,563,614 (hereinafter "Owar")) in view of Benavides. Upon notification of otherwise allowable subject matter in the instant case, Applicants will address the double patenting rejections by filing a terminal disclaimer if appropriate. Applicants respectfully request that the rejection be held in abeyance until after the claim amendments and remarks are considered.

CONCLUSION

Applicants believe that the amendments herein put the claims in condition for allowance.

Should the Examiner wish to discuss any of the amendments and/or remarks made herein, the undersigned attorney would appreciate the opportunity to do so.

The Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment to Deposit Account No. 04-1105.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,
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